

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Rondeau v. Rondeau, 2002 NSSC 318

**Date:** 20020917

**Docket:** 1207-001754

**Registry:** Truro

**Between:**

Ronald Lorne Rondeau

Petitioner

v.

Judith Karen Rondeau

Respondent

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**DECISION**

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**Judge:** The Honourable Justice J. E. Scanlan

**Heard:** September 17, 2002 in Truro, Nova Scotia

**Written Decision:** January 12, 2009

**Counsel:** Ms. Cindy Bourgeois, Solicitor for the Petitioner  
Ms. Tanya Nicholson, Solicitor for the Respondent

**By the Court:**

[1] This is an interim application wherein Dr. Rondeau seeks to vary the amount of child support payable pursuant to an earlier order of this Court in relation to two children of the marriage, specifically Suzanne Rondeau and Jeffrey Rondeau. The Court Order required Dr. Rondeau to pay some \$2,476.00 per month in child maintenance. This was in addition to the sum of \$2,700.00 per month that Dr. Rondeau was paying in spousal support.

[2] I note by way of background that Dr. and Mrs. Rondeau had been in a rather lengthy relationship by today's standards. Dr. Rondeau has been practising in Truro and Oxford in a medical practice. Mrs. Rondeau had begun a teaching career but basically gave that up, or has not pursued it in approximately 20 years.

[3] It goes without saying as a couple they find themselves in rather tragic circumstances when I consider the income this family had at its disposal and where they find themselves now. I understand Dr. Rondeau has already gone through a bankruptcy proceeding in 1998 and 1999, in spite of that substantial income he was earning at that point in time. The indication is he was earning a fairly substantial income at that point in time and he has little or nothing to show for it. As I look

at the budgets as put forth by Dr. Rondeau and Mrs. Rondeau, they are both running deficits, even now. They are very substantial deficits. I would suggest there be a very serious and immediate look at both of the budgets if they do not want imminent bankruptcy again.

[4] When I look at Dr. Rondeau's budget and hear some of his evidence, especially in relation to how he is going to save money on the car and establish a credit rating, I suspect the poor credit rating is going to have an awful lot more to do with the decisions he makes, really to finance something like a second car which he can ill afford. Things like trips, which while they may be good for his health, are a questionable necessity. I expect there are cheaper places he can go to, to get away from the office in Oxford. A lot closer than Mexico. He is going to have to ask himself what he can afford. He really cannot continue to run a deficit. It just does not work.

[5] I say as well to Mrs. Rondeau in terms of her budget that while it is important the children have a home to go to, and they do benefit from having a home to go to, that aside from that very indirect, and in this case rather minimal benefit for the children, the amount of money that she has been receiving should be

enough to support her very comfortably for one person. Essentially the evidence I heard from Dr. Rondeau is that a vast majority of university living expenses have been paid by him. There is a rather minimal transfer of benefit from Mrs. Rondeau to Suzanne and Jeffrey. Yet she comes to court and suggests a \$1,000.00 a month deficit, even after receiving the \$2,700.00 per month for herself and the present \$1,660.00 that she is receiving in relation to Suzanne. As I have said, this family is headed to another bankruptcy unless one or both can take a long, serious, hard look at what their real needs are and what they can afford and cannot afford.

[6] I do not know how many bankruptcies a doctor can go through. I suppose it must be different than lawyers and judges because we cannot go through too many. I would expect that if it does not interfere with his legal right to practice medicine it may well weigh very heavily in terms of his emotional ability to continue to practice medicine. That is very important to both parties. I say to Mrs. Rondeau, if you kill the goose that lays the golden egg, there is no more gold. Dr. Rondeau has a right to, and a need for, money from which he can afford a reasonable living or livelihood for himself. That goes beyond what is required for your children and it goes beyond that which is required to pay Mrs. Rondeau. Dr. Rondeau is entitled to a reasonable standard of living.

[7] I referred already to the ill conceived plan in relation to the Toyota Camry and Dr. Rondeau is prepared to admit himself that it was not a good investment in terms of keeping the Camry instead of the \$5,000.00. Aside from that when I look at his budget, the rent is extremely modest. Food and household supplies, he referenced the children and getting groceries for them as Mrs. Rondeau does. Six hundred dollars would not appear to be inordinate. Other housing and clothing expenses, I really do not see where those amounts can be cut much more. I do not have to go through them all one at a time. I just do not know where they can be cut anymore. \$277.39 for Christmas, birthday events, etc. In some people's minds that would be a lot. Considering what Dr. Rondeau makes I do not see it as being an awful lot but if he has to cut, I suppose that would be a place where he has to cut. I look to Church and donations. I think they are two separate items. I say to Dr. Rondeau he is going to have to tell people who come knocking at his door the charity starts at home and he just cannot afford it. He has to look after his children and himself and his wife first.

[8] The RRSP's, as I understand the situation they are showing at line 15 and they are also showing up in line 42. That would really be double dipping. As I

understand the situation Dr. Rondeau has funded an RRSP for 2001 tax year by means of a loan. He has not been paying the \$416.67 he is showing on line 25 but he expects that if he is going to fund it, it will have to be through another loan or, of course, not fund it at all. The \$453.18 is in my mind a reasonable amount for Dr. Rondeau. As I have indicated already the Church and the holidays, it is probably a little bit more than he can afford. That is not to say he cannot take any trips or vacations but he is going to have to take a good, hard look each and every time to see if he can afford it.

[9] I really cannot go through the rest of the budget and find many other places where Dr. Rondeau can cut. He is living very, very modestly in terms of his income. I note that out of his net monthly income his budget is showing the \$2,700.00 per month in spousal support. I take into account the income tax relief that he gets as a result of the spousal maintenance but he does not get any income tax relief for the child support, the \$1,660.00 amount. The Court is going to decide whether to pay it directly to Suzanne or indirectly to her through Mrs. Rondeau. That in essence is going to be an amount that he still has to pay. Even with those figures, taking into account that he has \$2,000.00 a month if you spread it over 12 months, and add it to the settlement as regards a business expense, he is going to

get some tax relief there I assume. He is still showing a deficit of approximately \$1,500.00 a month. I have not done it down to the penny. I just note the \$2,476.00 is not the amount being paid, it is \$1,660.00. There will be some tax relief as a result of the one time expense, \$2,000.00 per month, related to Suzanne. That \$2,000.00 per month, as I understand it, is a one time thing and it is not going to reoccur.

[10] I have some concerns in relation to Dr. Rondeau's income situation. He referenced the treatment he is getting in regards to mental health. He has a concern as to whether or not he is going to be able to continue practising. He had to be relieved just recently. He said that is as much attributed to this court proceeding as it is to his ongoing mental health situation. The Court has some concern in that regard.

[11] The court is also cognizant of Dr. Rondeau's evidence as regards his ability to, or the availability of, emergency room income that he has. It is in jeopardy in the sense that it may well be that the Springhill Hospital no longer has the emergency department open. If that occurs Dr. Rondeau will have a gross amount loss of approximately \$5,200.00 per month from his income. That will not

necessarily give him any relief in terms of his business expenses, it is just straight off the top in terms of income that he earns. I am not dealing with that situation now. It is speculative as to whether or not it will close. If it does then Dr. Rondeau and Mrs. Rondeau are going to have to deal with it at that point in time.

[12] I will deal with the issue of spousal support. I am not satisfied the issue of spousal support is properly before me. There is an interim order which requires \$2,700.00 per month to be paid. There has been no application to vary the spousal support. Although the decision I made may well have an impact on Mrs. Rondeau and the income that is going into her house, I am not prepared to vary the spousal support amount at this point in time. Counsel indicate the matter is set for a full hearing early in the year 2003. That is only a few months away and the Court will deal with it at that time.

[13] I would make one comment to Mrs. Rondeau and that is with regard to her efforts to earn an income. Under the **Divorce Act** there is a duty on her to try and assist in supporting herself. That does not mean she can say, well I have received a teaching certificate 20 years ago, apply to substitute and get back into the education system and that is all I have to do. Quite frankly that is not all she has to



do. She has to make a reasonable effort to contribute to her support where the ultimate goal is to support herself. I am not satisfied based on the scant evidence I have before me, as it was not formally canvassed in today's hearing, there simply was not enough time, but it does not appear as though she has made a full and proper effort to find ways to support herself. I suggest very, very, strongly that she see what is necessary for her to re-enter the work force. It may well be that she can convince the Court, at a later date, that she cannot re-enter the work force. Certainly be aware of it. It may be a problem that has to be dealt with later. I just make the comment.

[14] As regards child maintenance, I turn first to the issue of Jeffrey. Jeffrey is, in accordance with the definition set out in the **Divorce Act** and the cases that are considered as relevant under the **Divorce Act**, no longer a child of the marriage. Jeffrey is basically embarking on a trip to Australia and has been concentrating his time and efforts in getting money to travel to Australia to spend a few months after having obtained an undergraduate degree at St. FX University.

[15] I reference the decision of Judge Daley in **Cole v. Cole**, 1995 N.S.J. 362, para 13. Judge Daley listed a number of factors in determining the issue as to

whether or not a child is a child of the marriage. I am not going to enunciate all of those factors but, as noted by Judge Daley, those are all of the factors that the Court might consider. Certainly it is a fairly complete list of things that are determinative of the issue as to whether or not a child is a child of the marriage.

[16] In this case Jeffrey is certainly well over the age of majority. That alone, of course, is not enough to determine whether or not he is a child of the marriage. In terms of education, for the next few months at least while he is travelling around the world, it is not his education that is interfering with his ability to support himself. He has shown that he can get work and has the ability to work hard. This contributes substantially to his support. While it may not be enough to afford to travel around the world, going to Australia and Fiji, pay all living expenses, travel expenses, and everything else in relation to that trip, it is enough to support himself. If he decides that is what he wants to do with the money he earns it does not mean that he cannot withdraw from the care or charge of his parents. It means that is the choice he has made in terms of his money. It may not be a wise choice. I am not going to transfer the impact of that decision on to Dr. Rondeau requiring him to support Jeffrey.

[17] Having reviewed the factors as enumerated by Judge Daley in **Cole v. Cole**, I am not satisfied he is a child of the marriage. That does not say Dr. Rondeau will not contribute to Jeffrey if he calls him up or writes to him and says he is in trouble, he is in Australia and he does not have enough money to feed himself or he has a medical condition and he cannot get home or he needs some help. That is not what the Court is suggesting here. The Court is saying the situation as it now exists is that Dr. Rondeau will not have to continue paying child maintenance in accordance with the **Divorce Act**. Jeffrey is not a child of the marriage.

[18] I am satisfied as well that in terms of Jeffrey's situation the change from status as a child of the marriage commences immediately after Jeffrey finished university. He started working right away. He started earning money to pay for his own support, or close to it based on the evidence the parties have given. Really nothing has changed in that regard since he completed his undergraduate degree.

[19] Having said that, I do note the case law would suggest that if Jeffrey's situation changes based on his future plans to return to the University of Maine or elsewhere in terms of an education degree, there is some case law at least which would suggest that he may well again qualify as a child of the marriage. I would

not expect that would necessarily mean that Mrs. Rondeau is going to receive money through child maintenance payments. Rather, I point out to Dr. Rondeau and to Mrs. Rondeau should she have an income, there may be a legal requirement for both to contribute to his education if he resumes it. I do not judge that issue now. I simply point it out as a possibility. Dr. Rondeau has indicated by way of affidavit that he is prepared to assist Jeffrey should Jeffrey resume his education. It may not be a matter of choice, it may be required by law.

[20] I turn to what I am satisfied is perhaps the most difficult issue before the Court today and that is the issue of support for Suzanne Rondeau who is now 19 years old and continues to attend university. Dr. Rondeau suggests that Suzanne is no longer a child of the marriage and he used a different logic in that regard. He suggests that Suzanne is no longer a child of the marriage because she is living with her boyfriend in a new student residence at the university complex. Her boyfriend is also 19 years of age, according to the affidavit I have in front of me. There is nothing in the evidence which suggests that Suzanne's boyfriend does anything other than contribute to his own expenses. I would not for a moment suggest that Mrs. or Dr. Rondeau should contribute directly or indirectly to Suzanne's boyfriend's expenses. That is not what this case is about. The case is

about whether or not Suzanne continues to be a child of the marriage and determining what her reasonable needs are in terms of education expenses and child care expenses.

[21] The New Brunswick Queens Bench in **Kutche**, 1995, 162 NBR (2d) 321, referenced the fact that a child living with a partner, in that case a boyfriend, while it may be relevant in terms of the financial consequences, is not determinative of the issue of whether or not the child continues to be a child of the marriage.

[22] I am satisfied that Suzanne is a child of the marriage at this point in time. I do not think Dr. Rondeau would dispute that. The fact that she is still trying to obtain an undergraduate degree, has two years under her belt and a number of years to go, is suggestive of the fact that she is not able to withdraw from the charge of these parties. She is still dependant upon them, for logical and justifiable reasons. The issue really then becomes do I require that Dr. Rondeau pay maintenance in accordance with the guidelines to Mrs. Rondeau and then pay in addition to that for other expenses related to Suzanne's university. Alternatively, do I allow Dr. Rondeau to pay the amounts directly to Suzanne.

[23] I start by asking a question as opposed to giving an answer and the question in my mind in this case is how much of the money that Dr. Rondeau is currently paying to Mrs. Rondeau is really being used for the benefit either direct or indirect for Suzanne. As I go through Mrs. Rondeau's budget I am very, very concerned that other than having a place for Suzanne to come home to on one or two weekends per month, or during the odd breaks through the university school year, aside from the moral support that Mrs. Rondeau offers to her daughter, there seems to be very little direct financial contribution and a rather minimal indirect benefit that is being received by Suzanne from her mother.

[24] Mrs. Rondeau has put together a budget, presented in evidence here, and there was a very substantial contribution at this point in time to some of those expenses by Dr. Rondeau. He talked of some of the food that he was prepared to buy and the restaurants he took Suzanne to and the entertainment when he goes to Halifax. Those types of things. But even if you assume for a minute that there are \$762.00 a month in the area of expenses for Suzanne, I have to ask where the other \$800.00 or \$900.00 per month is going. It does concern the Court. Normally the Court will require the payor, the non-custodial parent, to pay the money to the custodial parent and then assume that a fairly substantial portion of that money is

going to be paid for or to the child of the marriage. It takes into account a number of things, for example, the ability or inability or the question of ability of a young person to manage their own monies. In this case the evidence suggests that Suzanne is very, very responsible. She can and does manage money very wisely. Both parents suggest that she does not waste money. Many of the expenses that Dr. Rondeau pays in relation to university, he pays at basically 100 percent. I reference things like tuition and books. The Court has to ask why is it that he pays 100 percent of those amounts given the rather substantial maintenance amounts that are paid to Mrs. Rondeau. Just because Dr. Rondeau has the larger income does not mean he is responsible to meet all of the section 7 or add-ons. He is required to contribute to them. He is contributing to them in a very substantial way. On the other hand, I find it difficult to find the same levels of contribution by Mrs. Rondeau.

[25] I am concerned when it comes to the issue of handing \$1,660.00 a month plus paying some of those extraordinary expenses for a 19 year old even when they have proven themselves. I am concerned that there is an opportunity for mismanagement and there are still some indirect expenses that Mrs. Rondeau has

to pay. By that I am referencing the fact there are still times when Suzanne does come to Mrs. Rondeau's house.

[26] I am satisfied the most appropriate way to deal with this issue is to require an ongoing payment of \$660.00 per month from Dr. Rondeau directly to Mrs. Rondeau. That should be more than enough to cover off those indirect expenses incurred on Mrs. Rondeau in relation to Suzanne when she comes home. Things like telephone calls to her. I am giving Mrs. Rondeau some discretion in terms of the monthly expenses that she might incur in relation to Suzanne.

[27] I am concerned that if I ordered a payment of any more than that to Mrs. Rondeau there will not be adequate benefit transferred to Suzanne. Dr. Rondeau will be required in addition to the tuition and books to pay \$1,000.00 per month to Suzanne directly. That is to cover things like rent and groceries and clothing. As I have indicated this is in addition to tuition and books which he has already been paying.

[28] I would suggest very strongly to Dr. Rondeau that in relation to Suzanne's expenses that if she does come to him with a reasonable request over and above the



\$1,000.00 per month plus the tuition and books, that he consider any additional payment if necessary and appropriate.

[29] I have also ordered enough money to go to Mrs. Rondeau that she should, as well, be considering any request Suzanne has regarding additional expenses, in case she does not get them from her father at any given point in time. It does not mean she simply takes the \$660.00 a month and put it into her household expenses and say that is the end of it, she does not have to give any more money. I am sure she does not want to do that.

[30] This is an interim order. It should get the parties through to January, the date of the next Court hearing.

[31] I would ask counsel to see if they can resolve the issue between now and January to ensure that Suzanne's reasonable needs are being met. If there is something the Court has missed in terms of her reasonable needs then the parties have the wherewith all to help her through. At least Dr. Rondeau does. Even though Dr. Rondeau appears to be in a crises situation, he has more room to manoeuver than does Mrs. Rondeau or does Suzanne.

[32] That is my decision. I do thank counsel. The briefs were excellent. They were of great assistance to the Court. Thank you.

J.

01/08/09